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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AVR Filing & Storage Systems, Inc.

File: B-250924

Date: February 25, 1993

William H. Butterfield, Esq., McGuire, Woods, Battle & Boothe, for the protester.
Iris M. Croft Wood, Esq., The Library of Congress, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's proposal for shelving system, which took several exceptions to the solicitation specifications, where the solicitation required offerors to demonstrate the functional equivalency of the offered system and the protester failed to do so, despite being afforded that opportunity during discussions.

DECISION

AVR Filing & Storage Systems, Inc. protests the rejection of its proposal under request for proposals (RFP) No. RFP92-62, issued by The Library of Congress, for a media shelving system.

We deny the protest.

The Library issued the RFP on August 14, 1992, to obtain a contractor to furnish and install a media shelving system for the National Library Service for the Blind and Physically Handicapped at the Taylor Street Annex, Washington, D.C. The RFP called for a complete shelving system consisting of mechanically-assisted, manually-operated mobile and freestanding shelving. The RFP included detailed specifications with accompanying engineering drawings describing the materials, design, construction, and configuration of the system to be furnished under the contract. Under the work statement, section C.4.1., the RFP

stated that the shelving system should have the following characteristics:

> "The operable compact shelving assemblies furnished shall be single end access, mechanically assisted, manually operated double faced ranges with single and double faced stationary ranges. Operable ranges shall operate on flat/low profile floor tracks with abutting floor tile providing a virtual flush floor surface free of open slots or gaps at floor track locations and with minimal floor track projection above the finished floor surface and minimal ramping transition to building aisles. Shelving sections shall be cantilever type and four-post case type as individually designated for various kinds of media materials to be shelved. The system shall be complete with plastic laminate finished end panels at building aisles and designated exposed locations, anti-tip devices, and related hardware and accessories."

The work statement included sections detailing specific requirements for materials, construction, and performance for each of the major features of the required shelving system, such as "Cantilever Type Shelving," "Four Post Shelving," "Floor Tracks (Operable Shelving)," "Carriages and Drive System (Operable Shelving)," and "Overhead Anti-Tip System."[1]

On August 31, the Library issued amendment No. 1 to the RFP, which, among other things, permitted offerors to furnish products deviating from the detailed specifications, provided the offered products met or exceeded the functional requirements, and contained the required quantities of faces, sections, and ranges. The amendment expressly assigned offerors, which proposed functionally equivalent products, the responsibility of providing in their proposals adequate evidence of claimed functional equivalency. In addition, section L.3.1 of the RFP's technical proposal instructions covering "Compliance with Requirements"

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[1]For example, under the Cantilever Type Shelving section, there were listed minimum material requirements for gauge thickness as follows: Shelves, 18 gauge; Webb Stiffeners, 13 gauge; Closed Base Brackets, 13 gauge; Top Tie Channel and Bottom Spreader, 16 gauge; Adjustable Shelf Bracket, 16 gauge; and Upright Columns, 16 gauge. Also, under the Floor Tracks section, the contractor was required to remove asbestos containing floor tile, pursuant to Environmental Protection Agency regulations, as necessary to accommodate the actual length and width of the floor track.

provided that, for the purpose of facilitating discussions, for every instance where the offeror does not propose to comply with or agree with a requirement, the offeror was required to propose an alternative and describe its reasoning therefor.

Under the RFP, the award was to be made to the offeror with the lowest priced, technically acceptable proposal. The RFP provided that technical acceptability would be judged on a "Pass/Fail" basis depending on whether a proposal met the minimum requirements of the RFP.

On September 11, the Library received seven proposals in response to the RFP. AVR's proposal did not offer to provided a shelving system that complied with all RFP specifications, but rather its own unique design that it asserts is functionally equivalent. AVR's proposal described this system and listed instances where the system did not comply with specification requirements.

The proposals were evaluated by a three-member technical evaluation committee (TEC) and the contracting officer established a competitive range of five proposals, including AVR's. The TEC determined AVR's proposal was technically unacceptable for a variety of reasons, which were communicated to AVR during discussions. These reasons included deficient cantilever shelving, an inadequately supported track system, a drive system drive shaft that was less than that specified, and an unsatisfactory anti-tip system. AVR was expressly advised why the TEC found AVR's system unacceptable with regard to each of the foregoing reasons.[2]

The written discussions were conducted with all competitive range offerors on September 17, and best and final offers (BAFO), including written responses to the discussion questions, were required to be submitted by 2 p.m., September 22.

AVR's BAFO responded to the Library's detailed technical concerns as follows:

> "All of our shelving meets or exceeds California seismic constraints code, and the specs were in the original bid. Please take the time to read it through. If additional specs are needed please call me at . . ."

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[2]Because of the proprietary nature of AVR's proposal, we will not discuss, in any depth, the technical details of its proposed system or the variances of its system from the specifications.

After the closing time for BAFOs, AVR submitted a more detailed response to the Library's specific technical concerns. Since the additional information was submitted late, the Library properly did not consider the information in evaluating AVR's BAFO.[3] See Federal Acquisition Regulation (FAR) § 52.215-10, which was incorporated into the RFP and which prohibited the consideration of proposal revisions submitted after closing time for BAFOs.

After evaluating BAFOs, the TEC determined that three proposals, including AVR's, were technically unacceptable, while the other two proposals were technically acceptable. On September 30, the Library made award to SpaceSaver Systems, Inc., which submitted the lowest priced, technically acceptable proposal. On October 14, AVR, whose price was slightly lower than SpaceSaver's price, filed this protest, objecting to the Library's evaluation of its proposal.

The crux of AVR's challenge is that the Library unreasonably did not find the AVR mobile shelving system to be functionally equivalent. Specifically, AVR maintains that the Library failed to consider that AVR proposed the only system expressly designed for mobile shelving.[4] AVR argues that the system it proposed was not only functionally equivalent, but superior to the specifications, and that the perceived deficiencies cited by the Library were adequately addressed in its proposal if the Library had properly understood AVR's proposal.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530; Virginia Tech. Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80. In reviewing an agency's technical evaluation, we will not reevaluate the proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with

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[3]After receiving this protest, the TEC reviewed this late submitted material and determined that it would have been insufficient to render AVR's proposal acceptable.

[4]In this regard, AVR asserts that mobile shelving generally is manufactured by companies who modify stationary shelving and that this process requires enhancing the structural integrity of the stationary shelving through such devices as webb stiffeners, gussets, turnbuckles, sway braces, topties, etc. AVR asserts that the RFP specifications were based on this assumption and these additional features are unnecessary in AVR's product due to its unique design.

the evaluation criteria stated in the RFP. Benthos, Inc., B-248597, Sept. 10, 1992, 92-2 CPD ¶ 163. The offeror has the burden of submitting an adequately written proposal and proposal revisions for the agency to evaluate. Id. A protester's disagreement with the agency's judgement is not sufficient to establish that the agency acted unreasonably. Instructional Design Sys., B-246314, Feb. 28, 1992, 92-1 CPD ¶ 254.

Based upon our review of the record, including oral testimony taken at a hearing conducted in connection with the protest,[5] we find no basis to conclude that the Library's evaluation of AVR's proposal was unfair or unreasonable. Rather, the record fairly shows that the Library reasonably found that AVR's proposal lacked sufficient technical information for the Library to determine that it was functionally equivalent to, or could satisfy, the RFP specification requirements. See Videotape Transcript of Hearing (VT) Tape 1 at 11:07 to 11:09:44, 11:19:37 to 11:20:08, and 14:32:06 to 15:00.

For instance, one exception proposed in AVR's proposal concerned the RFP's requirement for an overhead anti-tipping system. The RFP described an overhead anti-tipping system to consist of a plated steel shaft operating in steel enclosed plastic sleeves attached to the tops of shelving ranges, and that the shaft would transverse shelving range assemblies and be secured at fixed ranges and building wall columns. In lieu of the specified overhead anti-tipping system, AVR proposed an in-track anti-tipping system, which AVR characterized in its proposal as a seismic restraint bracket that meets California "OSHPOD" 3g (gravity) seismic standard under titles 14, 17 and 24, without modification. In our view, the Library could reasonably find that AVR's blanket assertion that the system met California seismic standards, without any technical support, explanation of the California standard, or discussion of the relevancy of the standard to the Library's requirements, was insufficient to establish the functional equivalency of AVR's anti-tipping system, particularly given AVR's failure to respond in its BAFO to the Library's specifically expressed concerns. See VT Tape 1 at 11:23 to 11:33:42; see also IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380 (where RFP requests specific technical information and proposal provides blanket statement of compliance but not the specific information requested, the agency may consider the proposal technically deficient).

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[5]The hearing was conducted pursuant to 4 C.F.R. § 21.5 (1992) to receive testimony from agency evaluators and representatives of the protester concerning AVR's proposal and the evaluation thereof.

Another example of an area of AVR's proposal regarded by the Library as lacking sufficient explanation was the RFP requirement that floor tracks be "installed directly to existing concrete floor slab surface and/or concrete leveling underlayment to provide total surface contact on the underside of the floor track." AVR proposed a completely different type of floor track system using levelers, instead of a floor track having total surface contact on the underside. Other than describing the floor tracks of its system and the function of the levelers, AVR's proposal did not otherwise explain why this approach was functionally equivalent to the specified track system, even when it was given an opportunity to respond to the Library's expressed concerns. In evaluating AVR's track system, the Library concluded that the effect of AVR's system may be to transfer the entire weight of the carriages, with their loaded shelves, directly on areas of the track system that did not appear to be adequately supported. See VT Tape 1 at 10:52 to 11:09. While AVR has presented persuasive evidence at the hearing that suggests that its system may indeed satisfy the Library's requirements in this regard, see VT Tape 1 at 17:40 to 17:43 and Tape 2 at 11:04 to 11:38, we cannot conclude that the Library acted unreasonably in finding AVR's proposal unacceptable in this area, given the lack of adequate explanation in AVR's proposal and AVR's failure to timely furnish the requested details showing its system's functional equivalency.

As indicated by the foregoing examples, AVR's proposal failed to clearly demonstrate the functional equivalency of its mobile shelving system in the areas where it deviated from the RFP's requirements. While during the course of the protest, AVR took considerable effort to demonstrate the acceptability and technical superiority of its shelving system to that described in the specifications, and the structural integrity of the product it proposed, the only significant consideration for purposes of our review is whether this information was adequately conveyed in AVR's proposal. See Benthos, Inc., supra. Even accepting that AVR may have offered a superior product, AVR's representative basically conceded during the hearing that the technical complexity of its proposed product, due to its unique and proprietary nature, reasonably rendered the Library incapable of determining its equivalency, absent observing the product (as was done at the hearing) or requesting additional data. See VT Tape 2 at 17:06:07 to 17:07:32, 17:20.

As stated above, the Library attempted to afford AVR the opportunity to address the agency's specific technical concerns when BAFO's were requested.[6] AVR responded in its BAFO with what the protester concedes was a "cryptic" statement that essentially referred the agency back to the proposal that the agency had already advised AVR was unacceptable. AVR assumed the risk that the Library might draw an adverse inference from its failure to provide a detailed response to the Library's specific technical concerns. See Berthos, Inc., supra. Under the circumstances, we find that the Library acted reasonably in rejecting AVR's technical approach to meeting the Library's mobile shelving requirement, since AVR's proposal failed to adequately explain the functional equivalency of its product.[7] See Instructional Design Sys., supra; Intertec Aviation, B-239672.4, Apr. 4, 1991, 91-1 CPD ¶ 348.

The protest is denied.

James F. Hinchman
General Counsel

[6]The record belies AVR's assertion that the Library did not conduct meaningful discussions. AVR was advised of the specific reasons why its proposal was considered unacceptable and provided a reasonable opportunity to respond to the Library's concerns.

[7]Although the Library, after the protest, conceded that AVR's drive system drive shaft may have been acceptable and the record suggests that the Library unreasonably believed that AVR intended to install its floor tracks to the asbestos tile, we do not find these defects to be sufficient to show that the Library acted unreasonably in determining AVR's proposal unacceptable, particularly given that AVR could have resolved the Library's confusion on these matters during discussions.